RECENT CASES.

ADVERSE POSSESSION — AGAINST WHOM TITLE MAY BE GAINED — WHETHER LANDLORD IS BARRED BY POSSESSION OF TENANT'S GRANTEE. — The plaintiff leased the premises in question for five years. The lessee soon after made a conveyance in fee to the defendant, who took possession of the property, claiming title by no right except that purported to be conferred by this deed, and remained in such possession as an exclusive owner for the full statutory period. The plaintiff had no knowledge of the lessee's disavowal of the tenancy, and brought ejectment upon notice thereof. *Held*, that under the Wisconsin statutes the defendant, having entered *bona fide* under color of title, has acquired a valid title, regardless of the relation existing between the plaintiff and the defendant's grantor. *Illinois Steel Co.* v. *Budzisz*, 119 N. W. 935 (Wis.).

Though the principal case is based on Wisconsin statutes, yet the interpretation of these statutes purports to be governed by principles of common law. The general rule is that the possession of a tenant, no matter how long continued, is not adverse, but is in subordination to the landlord's title. *Brandon* v. *Bannon*, 38 Pa. St. 63. And in England and some states no disclaimer by the tenant is sufficient to forfeit the term and make his claim adverse, unless the landlord so elects. *Doe* v. *Wells*, 10 A. & E. 427; *Jackson* v. *Davis*, 5 Cow. (N. Y.) 123. Usually, however, the tenant has power to repudiate the relation and initiate an adverse claim. *Willison* v. *Watkins*, 3 Pet. (U. S.) 43. This result is held to follow upon a positive disavowal of the owner's title, as soon as notice thereof is brought home to the owner. *Wells* v. *Sheerer*, 78 Ala. 142. The same rules apply to all persons deriving title from the tenant. Their possession is presumed to be in accordance with the title until some notorious and unequivocal act of exclusion shall have occurred. *Bradt* v. *Church*, 110 N. Y. 537; *Trustees* v. *Jennings*, 40 S. C. 168. In the principal case the landlord had no notice of his tenant's fraudulent act. It would seem, therefore, that the decision is not only unfair, but contrary to the authorities. *Bedlow* v. *N. Y. Floating Dry Dock Co.*, 112 N. Y. 263.

BANKRUPTCY — DISCHARGE — EFFECT OF COMPOSITION AGREEMENT IN EXERCISING STATUTORY CONDITION. — By statute the stockholders of a corporation were made personally liable for its debts after judgment against the corporation and petition of execution unsatisfied. A corporation filed a petition in bankruptcy, and all suits against it were restrained. The plaintiff secured an order permitting him to bring action, but before judgment a composition agreement was accepted by a majority of the creditors against the plaintiff's rights and was ratified by the court. The plaintiff thereupon discontinued his suit. He then sued the stockholders on their statutory liability. *Held*, that he can recover. *Firestone Tire Co.* v. *Agnew*, 194 N. Y. 165.

This decision overrules that of the lower court discussed in 22 HARV. L. REV. 225.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — PROCEEDINGS IN BANKRUPTCY AND CONTROVERSIES ARISING IN BANKRUPTCY PROCEEDINGS. — A creditor filed a claim upon some promissory notes against a bankrupt estate, expressly reserving a security in the form of a mortgage. The trustee attacked both the notes and the mortgage. On appeal to the Circuit Court of Appeals the claim was admitted, but the lien disputed. *Held*, that the Circuit Court of Appeals has jurisdiction on appeal as to the validity of the lien. *Coder* v. *Arts*, U. S. Sup. Ct., Apr. 5, 1909.

Broadly speaking, all issues directly arising in the settlements of bankrupt estates, including questions between the bankrupt and his creditors and matters of administration, are "proceedings in bankruptcy." *In re Friend*, 134 Fed. 778. But independent issues arising between the trustee and adverse claimants

in regard to property held by the trustee or such claimants are "controversies arising in bankruptcy proceedings." *Hewit* v. *Berlin Machine Works*, 194 U. S. 296. In matters of review and appeal this distinction is fundamental. *First Nat'l Bank* v. *Title & Trust Co.*, 198 U. S. 280. Appeals in "proceedings in bankruptcy" are governed solely by §§ 23, 24, 25 of the Bankruptcy Act. *Cook Inlet Coal Fields Co.* v. *Caldwell*, 147 Fed. 475. But in "controversies arising in bankruptcy proceedings" the appellate jurisdiction of the higher courts is the same as in other cases outside of bankruptcy. BANKRUPTCY ACT OF 1898, § 24 a. *Dodge* v. *Norlin*, 133 Fed. 363. A suit which raises the validity of both a creditor's claim and a lien incident thereto has been held to be a "proceeding in bankruptcy" proper. *Cunningham* v. *German Ins. Bank*, 103 Fed. 932. And the proceeding retains this character, though on the appeal, as in the present case, the lien is the only point in dispute. *Burow* v. *Grand Lodge*, 133 Fed. 708. But where the sole original claim is the enforcement of a lien, it is a "controversy arising in bankruptcy proceedings." *In re First Nat'l Bank*, 135 Fed. 62.

BANKRUPTCY — PROVABLE CLAIMS — CONTINGENT CLAIMS. — A father and son entered into an agreement whereby the son promised to pay $8000 to the father's estate five years after the father's death, and the father promised to leave the son certain property at his death. The son went bankrupt and the father attempted to prove his claim against the bankrupt estate. *Held*, that the claim is not provable, as the son's liability is contingent on the father's leaving him the property at death. *In re Hartman*, 166 Fed. 776 (Dist. Ct., N. D. Pa.).

Under the early English statutes contingent claims were not provable against a bankrupt estate. *Tully* v. *Sparkes*, 2 Ld. Raym. 1546. By special provisions in the federal Bankruptcy Acts of 1841 and 1867 proof of contingent claims was allowed. 5 U. S. STAT. 445; 14 *ibid.* 526. The mere fact alone that such a provision was omitted from the present act would seem to raise an implication that proof of such claims should not be allowed under it. See *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, 448. Moreover, some courts in construing the section in the act defining claims which are provable have held that it expressly excludes contingent claims. *Goding* v. *Roscenthal*, 180 Mass. 43; *In re Chambers, Calder, & Co.*, 2 N. B. N. Rep. 864. But the trend of decision in the federal courts is that contingent claims, in certain circumstances, are provable as "claims on a contract express or implied." *Moch* v. *Market Street National Bank*, 107 Fed. 897; *In re Smith*, 146 Fed. 923. But even under the express provisions of the earlier acts claims which were dependent upon a contingency so uncertain as to make any calculation of their value practically impossible were not provable. *Riggin* v. *Magwire*, 15 Wall. (U. S.) 549. There has been a similar holding under the present act, which seems to sustain the principal case. *Dunbar* v. *Dunbar*, 190 U. S. 340.

BANKS AND BANKING — DEPOSITS — DRAWEE'S LIABILITY ON FORGED INDORSEMENT WHERE THERE IS FICTITIOUS PAYEE. — In pursuance of a fraudulent scheme, A, an employee of the plaintiff, obtained from the latter by false representations numerous checks in payment of goods supposed to have been bought of B, the payee. The plaintiff did not know that he was not indebted to B. A forged B's indorsements and secured payment from the defendant bank, on whom the checks were drawn. *Held*, that the bank must bear the loss. *Jordan Marsh Co.* v. *National Shawmut Bank*, 87 N. E. 740 (Mass.).

A drawee who pays a check on which the payee's indorsement is forged cannot charge the amount paid to the drawer's account, unless the latter is guilty of negligence which caused the payment. *Shipman* v. *Bank of New York*, 126 N. Y. 318; *First National Bank* v. *Whitman*, 94 U. S. 343. The reason for this rule lies in the relation between bank and depositor. The former may disburse only in conformity with the latter's directions, and payment of a check on a forged indorsement is, of course, unauthorized. *Harter* v. *Mechanics Bank*, 63 N. J. L. 578. In the present case the plaintiff's negligence